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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/831,000	05/02/2001	Scott W. Wong	178-59010	7142

24197 7590 06/17/2003  
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EXAMINER

LUCAS, ZACHARIAH

ART UNIT PAPER NUMBER

1648

DATE MAILED: 06/17/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/831,000

Applicant(s)

WONG ET AL.

Examiner

Zachariah Lucas

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 May 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 35-68 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 35-68 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Election/Restrictions*

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions that are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 35-37, 47-49, 52, 59-62, drawn to rhesus rhadinovirus (RRV), and compositions or oligonucleotides thereof, and to a first method of using the virus to produce an immuno-compromised model of RRV infection.

Group II, claim(s) 38-41, drawn to proteins of the RRV.

Group III, claim(s) 42-46, 49-52, drawn to nucleic acids encoding a protein of RRV and oligomers thereof.

Group IV, claim(s) 53-58, drawn to a method of testing the efficacy of a drug to treat viral infection.

Group V, claim(s) 63-68, drawn to methods of testing the efficacy of RRV vaccine candidates.

For Group II above, restriction to one of the following is also required under 35 USC 121. Therefore, election is required of one of Groups I-VI, and, if Group II is elected, then election is also required to one of the sequences identified in claim 39.

For Group III above, restriction to one of the following is also required under 35 USC 121. Therefore, election is required of one of Groups I-VI, and, if Group III is elected, then election is also required to one of the sequences of claim 43.

2. The subinventions of Groups II and III, identified in claims 39 and 43, respectively, do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule

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13.2, they lack the same or corresponding special technical features for the following reasons: each of the separate inventions comprises a sequence that is or encodes a separate protein that performs a separate function.

3. The inventions listed as Groups I, II, and III do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: each of these groups relates to a different type of composition that performs different function. Groups relates to a viral particle used to infect cells. Group II relates to proteins, each of which performs a specific function of its own, and may be used to raise antibodies. Group III relates to nucleic acids encoding proteins, which may be used to make proteins, transform cells, and as probes.

4. The inventions listed as Groups I-III and Groups IV and V do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: the methods of Groups IV and V do not relate to methods of using or making the products of Groups I-III.

### *Species Election*

Groups IV and V each contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1. Therefore, election is required of one of Groups I-VI, and, if one of Groups IV or VI is elected, then election is also required to one of the species IV/V (A)- (E). Species IV/VI (A)- (E) represent the elected group wherein the condition against which the vaccine or drug is being tested is:

IV/V (A)	B-cell hyperplasia;
IV/V (B)	lymphadenopathy;
IV/V (C)	splenomegaly;
IV/V (D)	hypergammaglobulinemia; or
IV/V (E)	autoimmune hemolytic anemia.

The following claim(s) are generic: 53 and 63 are generic for, respectively, Groups IV and V.

5. The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: each of the methods represented by the subgroups represents a method of determining the efficacy of a different drug or vaccine against a different disease. Thus, each of the methods is performing a different function from the other species.

### *Conclusion*

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6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

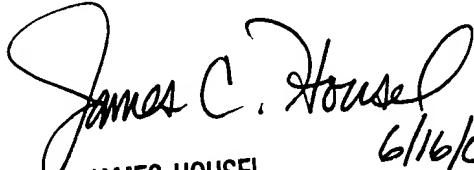
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zachariah Lucas whose telephone number is 703-308-4240. The examiner can normally be reached on Monday-Friday, 8 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel can be reached on 703-308-4027. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4242 for regular communications and 703-872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

Z. Lucas  
Patent Examiner

June 16, 2003

  
JAMES HOUSEL  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600  
6/16/03